

# **Exhibit 4**

## **(Affidavit of Thomas Isenberg)**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
PHILADELPHIA DIVISION

**Road-Con, Inc.; Neshaminy  
Constructors, Inc.; Loftus Construction,  
Inc.; PKF-Mark III, Inc.; and Scott A.  
LaCava,**

Plaintiffs,

v.

**City of Philadelphia; and James Kenney,**  
in his official capacity as mayor of the City  
of Philadelphia,

Defendants.

Case No. 2:19-cv-01667-JS

**AFFIDAVIT OF THOMAS ISENBERG**

I, Thomas Isenberg, being duly sworn, state as follows:

1. My name is Thomas Isenberg. I am over 21 years old and fully competent to make this affidavit. I submit this affidavit in support of the plaintiffs' motion for summary judgment and permanent injunction.
2. I have personal knowledge of the matters contained in this affidavit, and all of the facts stated in this affidavit are true and correct.
3. I am the Director of Compliance & Contract Controls at PKF-Mark III, Inc (“PKF”).
4. PKF’s principal place of business is located at 17 Blacksmith Road, Newtown, Pennsylvania 18940.
5. PKF is a prequalified PennDOT contractor that regularly works on PennDOT projects with employees who are members of the United Steelworkers.

6. PKF has completed several projects for state agencies including PennDOT and SEPTA, which include projects owned by those agencies located within the city of Philadelphia.

7. PKF is a signatory to a collective-bargaining agreement with United Steelworkers Local 15024.

8. A copy of PKF's collective bargaining agreement with the United Steelworkers is attached at Exhibit "B" to the Plaintiffs' Requests for Admission.

9. The employees of PKF have chosen the United Steelworkers to be their bargaining representative.

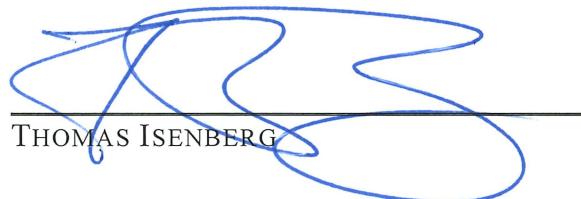
10. PKF pays Business Income and Receipts Tax (BIRT), sales and use tax, and city wage taxes to the city of Philadelphia.

11. Exhibit "A" to this affidavit is an authentic copy of receipts and tax forms showing that PKF paid Business Income and Receipts Tax (BIRT) taxes to the city of Philadelphia in 2019 and 2020.

12. Exhibit "B" to this affidavit is an authentic copy of tax forms showing that PKF paid city wage taxes to the city of Philadelphia in 2019.

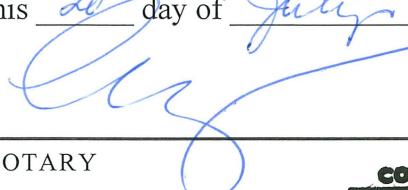
13. Because PKF maintains a collective-bargaining agreement with the United Steelworkers, it cannot perform work on any city of Philadelphia public-works subject to a project labor agreement with its current workforce.

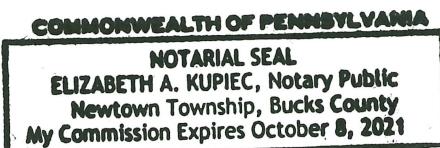
This concludes my sworn statement.



THOMAS ISENBERG

Subscribed and sworn to me  
this 20 day of July, 2020

  
NOTARY



# **Exhibit A**

## **to Affidavit of Thomas Isenberg**

This is a "printer friendly" page. Please use the "print" option in your browser to print this screen.



## Philadelphia, City of - Tax Revenue Department, PA

### Business Income and Receipts Tax (BIRT)

**Confirmation Number:** 147451  
**Payment Date:** Tuesday, July 7, 2020  
**Payment Time:** 10:25AM ET

#### Payer Information

Name:	GLENN A ELY
Street Address:	PO BOX 390
	NEWTOWN, PA 18940
	United States
Daytime Phone Number:	(267) 759 - 3080
E-mail Address:	eak@pkfm.com
Account Number:	3575248
Tax Year:	1219
Tax Period:	191231

**Thank you for using Official Payments Center to make your payment. Please print this receipt for your records. Click the "Continue" button to return to the City of Philadelphia Payment Center.**

#### Card Information

Card Type:	American Express
Card Number:	*****2006

#### Payment Information

Payment Type:	Business Income and Receipts Tax (BIRT)
Payment Amount:	\$39,751.00
Convenience Fee:	\$795.02
Total Payment:	\$40,546.02

Thank you for using ACI Payments, Inc. If you have a question regarding your payment, please call us toll free at 1-800-487-4567. To make payments in the future, please visit our website at [www.officialpayments.com](http://www.officialpayments.com).

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Detach here

**2019 BIRT and MANDATORY ESTIMATED 2020 BIRT  
PAYMENT COUPON**

**Due Date: April 15, 2020**

TAXPAYER NAME PKF-MARK III, INC.  
and ADDRESS 17 BLACKSMITH ROAD  
NEWTOWN, PA 18940

CITY ACCOUNT #: 2956178

**Tax Due**

39751 .00

### **Interest & Penalty**

0 . 0 0

**Total Due**

39751 .00

**Make check payable to: "City of Philadelphia"  
Include your Account Number on your check or money order.**



30419

2019 BIRT

DUE DATE: APRIL 15, 2020

CITY OF PHILADELPHIA  
DEPARTMENT OF REVENUE  
2019 BUSINESS INCOME & RECEIPTS TAX  
For business conducted in and out of Philadelphia

City Account Number  
2956178

EIN 231715080

SSN

Taxpayer E-mail Address

DRM@PKFM.COM

If this is a change of address, file a Change Form and check this box:If your business terminated in 2019, enter the termination date AND file a CHANGE FORM. →**YOU MUST COMPLETE WORKSHEET "S" and SCHEDULE "C-1"**If this is an amended return place an "X" here:**COMPUTATION OF TAX DUE OR OVERPAYMENT**

1. NET INCOME PORTION OF TAX (from Schedule B, Line 13 or Schedule A, Line 15). If there is no tax due, enter "0" .....	1.	48597
2. GROSS RECEIPTS PORTION OF TAX (from Schedule D, Line 13). If there is no tax due, enter "0" .....	2.	16033
3. Tax Due for the 2019 Business Income & Receipts Tax (Line 1 plus Line 2) .....	3.	64630
4. <b>MANDATORY 2020 BIRT Estimated Payment (See Instructions)</b> .....	4.	64630
5. Total Due by 4/15/2020 (Line 3 plus Line 4) .....	5.	129260

**ESTIMATED PAYMENTS AND OTHER CREDITS**

6a. Include any estimated and/or extension payments of 2019 BIRT previously made, and any credit from overpayment of the 2018 BIRT and/or 2019 NPT return .....	6a.	89509
6b. Credit from Special Credit Schedule (SC). (Cannot exceed amount on Line 3) .....	6b.	
6c. Total payments and credits. (Line 6a plus Line 6b) .....	6c.	89509
7. Net Tax Due (Line 5 less Line 6c). If Line 6c is greater than Line 5, enter "0" .....	7.	39751
8. Interest and Penalty Refer to web site for current percentage .....	8.	
9. <b>TOTAL DUE including Interest and Penalty (Line 7 plus Line 8).</b> Use payment coupon. Make check payable to: "City of Philadelphia" .....	9.	39751

**OVERPAYMENT OPTIONS** If Line 6C is greater than Line 5, enter the amount to be:

10a. Refunded. Do not file a separate Refund Petition .....

10b. Applied to the 2019 Net Profits Tax Return .....

10c. Applied to the 2020 Business Income & Receipts Tax .....

10a.

10b.

10c.

Under penalties of perjury, as set forth in 18 PA C.S. §§ 4902-4903 as amended, I swear that I have reviewed this return and accompanying statements and schedules, and to the best of my knowledge and belief, they are true and complete.

Taxpayer Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone # 215-968-5031Preparer Signature EMILY GUNTHERCPA Date \_\_\_\_\_ Phone # 215-643-3900

CLIFTONLARSONALLEN LLP  
610 W. GERMANTOWN PIKE,  
PLYMOUTH MEETING, PA 194

CCH

996301 11-19-19



# 2019 BIRT SCHEDULE B



30519

City Account Number  
2956178

## COMPUTATION OF TAX ON NET INCOME (METHOD II)

Reminder - You *must* use the same method (METHOD I or METHOD II) that you elected on the first Business Income & Receipts Tax return filed. If you are using Schedule B, do not complete or file Schedule A.

1. Net Income (Loss) as properly reported to the Federal Government	STATEMENT 1	1.	6891240
2. ADJUSTMENTS (Per BIRT Reg. 404 and Public Law 86-272)			
(a) Income net of interest expense attributable to direct obligations of the Federal Government, Pennsylvania or the political subdivisions of Pennsylvania. (If less than zero, enter zero on this line)		2a.	45878
(b) Net Income (Loss) from certain port related activities. (Reg. 302 (T))		2b.	
(c) Net Income (Loss) from specific PUC and ICC business activities. (Reg. 101 (D)(3))		2c.	
(d) Net Income (Loss) from Public Law 86-272 activities		2d.	
(e) Receipts by corporations of dividends, interest and royalties received from other corporations in the same affiliated group and/or from other corporations of which the receiving corporation owns at least 20% of the stock and/or BIRT Regulation §404 (B)(5) adjustments (Reg. 302 (O))		2e.	
(f) Line 1 minus Lines 2a through 2e		2f.	6845362
(g) All other receipts from other corporations of the same affiliated group. (Reg. 302 (N))		2g.	
(h) Gross Receipts per BIRT Regulation §404(B)(5)(e)		2h.	
(i) Divide Line g by Line h and enter the result here		2i.	
(j) Multiply Line f by Line i and enter the result here		2j.	
3. ADJUSTED NET INCOME (LOSS) (Line 2f minus Line 2j)		3.	6845362
4. Total Nonbusiness Income (Loss)		4.	0
5. Income (Loss) to be apportioned (Line 3 minus Line 4)		5.	6845362
6. Apportionment Percentage from Schedule C-1, Line 3		6.	.114590
7. Income (Loss) apportioned to Philadelphia (Line 5 times Line 6)		7.	784410
8. Nonbusiness Income (Loss) allocated to Philadelphia		8.	
9. Current year Income (Loss) (Line 7 plus Line 8)		9.	784410
10. Statutory Net Income Deduction from Worksheet S, Line S5. (Must complete Schedule C-1.)		10.	6862
11. Loss Carry Forward, if any		11.	
12. Taxable Income (Loss) (Line 9 minus Line 10 minus Line 11)		12.	777548
13. TAX DUE (Line 12 times .0625) If Line 12 is a loss, enter zero		13.	48597
ENTER HERE AND ON PAGE 1, LINE 1 OF THIS RETURN.			

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BIRT - Sch. B



FORM BIRT	FEDERAL NET INCOME AND ADJUSTMENTS	STATEMENT 1
DESCRIPTION		AMOUNT
DEPRECIATION ADJUSTMENT		-493,921
ADDITIONAL ORDINARY INCOME		3,686
ORDINARY INCOME FROM TRADE OR BUSINESS		7,234,419
INTEREST INCOME		147,424
DIVIDEND INCOME		148
NET SECTION 1231 GAIN/LOSS		0
CHARITABLE CONTRIBUTIONS		-516
TOTAL TO FORM BIRT, SCH B, LINE 1		6,891,240

# 2019 BIRT SCHEDULE C-1



30619

City Account Number

2956178

For business conducted in and out of Philadelphia

The Department has adopted a **Single Sales/Receipts Factor Apportionment** methodology for BIRT. The Property and Payroll Factors are no longer used in the calculation of the Philadelphia Apportionment percentage. The Single Sales/Receipts Factor Apportionment percentage is the ratio of Philadelphia Sales/Receipts to Total Sales/Receipts everywhere.

The sourcing of sales/receipts is the same as it has been in prior years. Receipts and Taxable Receipts are defined at *Philadelphia Code § 19-2601* and explained in Article III of the BIRT Regulations.

[www.phila.gov/revenue/birt-regs](http://www.phila.gov/revenue/birt-regs)

## Market-Based Sourcing of Service/Sales for Software Companies

A **Software Company** (as defined by BIRT Regulations Section 101DD) is to source sales/receipts (for both the Receipts and Net Income bases) in accordance with **Market-based sourcing**. That is, the sale of products and the performance of services will be deemed to be the location where the recipient receives the benefit of the products and services.

**This schedule must be completed in order to receive the deduction from Worksheet S.**

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## **COMPUTATION OF APPORTIONMENT FACTOR TO BE APPLIED TO APPORTIONABLE NET INCOME.** YOU MUST COMPLETE SCHEDULE C-1 IF YOU ARE APPORTIONING YOUR INCOME. FAILURE TO INCLUDE THIS SCHEDULE WITH YOUR RETURN MAY RESULT IN THE DISALLOWANCE OF YOUR APPORTIONMENT AND YOU MAY BE BILLED.

1. Philadelphia Sales/Receipts (From Schedule D, line 6) .....	1.	11431046
2. Gross Sales/Receipts Everywhere (From Schedule D, line 4) .....	2.	99756293
3. Single Sales/ Receipts Factor Apportionment Percentage (Line 1 divided by 2) .....	3.	.114590

ENTER THE PHILADELPHIA RECEIPTS FACTOR APPORTIONMENT PERCENTAGE ON SCHEDULE A, LINE 8 OR SCHEDULE B, LINE 6.

**DO NOT FILE THIS RETURN if Line 3 is equal to 100%. Use the BIRT-EZ return which is available at**  
[www.phila.gov/revenue.](http://www.phila.gov/revenue)

**Do not submit Schedule C-1 with the BIRT-EZ return.**



# 2019 BIRT SCHEDULE D



30719

City Account Number

2956178

## COMPUTATION OF TAX ON GROSS RECEIPTS

The following taxpayers should not file Schedule D.

- Taxpayers registered under the Pennsylvania Securities Act of 1972;
- Persons subject to a tax imposed pursuant to Article VII, VIII, IX or XV of the Tax Reform Code of 1971 (Banks, Title Insurance Companies, Trust Companies, Insurance Companies and Mutual Thrift Institutions)
- Other Financial Businesses

These industries should file Schedules H-J, available on our website at [www.phila.gov/revenue](http://www.phila.gov/revenue).

**Do not report negative numbers on this schedule.**

1. Gross Receipts from sales and/or rentals of tangible personal property, dividends, interest, royalties, and gains on sale of stocks, bonds and business capital assets .....	1.	
2. Gross Receipts from services .....	2.	99756293
3. Gross Receipts from rentals of real property .....	3.	
4. Total of Lines 1 through 3 .....	4.	99756293
5. Less exclusions from:		
5a. Sales delivered outside of Philadelphia .....	5a.	
5b. Services performed outside of Philadelphia .....	5b.	88325247
5c. Rentals of real property outside of Philadelphia .....	5c.	
5d. Other (specify) .....	5d.	
6. Net Taxable Receipts before Statutory Exclusion (Line 4 minus Lines 5a through 5d) .....	6.	11431046
7. Statutory Exclusion (Lower of Line 6 or \$100,000.00) .....	7.	100000
8. Net Taxable Receipts after Statutory Exclusion (Line 6 minus Line 7) .....	8.	11331046
9. Receipts on which tax is to be computed by the Alternate Method. (Enter here and on Schedule E, Line 1, 5 or 10.) .....	9.	
10. Receipts subject to tax at the regular rate (Line 8 minus Line 9) .....	10.	11331046
11. TAX DUE at the regular rate. (Line 10 times .001415) .....	11.	16033
12. TAX DUE using the Alternate Method from Schedule E, Line 15, if applicable .....	12.	
13. TOTAL TAX DUE (Line 11 plus Line 12) .....	13.	16033

Enter here and on Page 1, Line 2 of this return.

## Worksheet S - Use to calculate Statutory Net Income Deduction

S1. Enter the lower of Line 6 above or \$100,000 .....	S1.	100000
S2. Enter Current Year Income from Line 11 of Schedule A or Line 9 of Schedule B. If loss, enter zero .....	S2.	784410
S3. Enter Net Taxable Receipts from Line 6 above .....	S3.	11431046
S4. Divide Line S2 by Line S3. (Cannot be greater than 1.0000) .....	S4.	.0686
S5. Statutory Net Income Deduction (Line S1 times Line S4. Cannot exceed \$100,000) Enter here and on Line 12 of Schedule A or Line 10 of Schedule B.	S5.	6862



**City of Philadelphia**  
**e-file Signature Authorization**

**2019**

► Do not send to the City of Philadelphia.  
► This is not a tax return. Keep this form for your records.

Taxpayer's Name  
**PKF-MARK III, INC.**

SSN/EIN  
**23-1715080**

**Part I Tax Return Information - Tax Year Ending December 31, 2019 (Whole Dollars Only)**

**Business Income & Receipts Tax**

<b>1</b>	Tax Due for the 2019 Business Income & Receipts Tax (Form 2019 BIRT, Line 3)	<b>1</b>	<b>64,630.</b>
<b>2</b>	MANDATORY 2020 BIRT Estimated Payment (Form 2019 BIRT, Line 4)	<b>2</b>	<b>64,630.</b>
<b>3</b>	Total Due by 4/15/2020 (Line 3 plus Line 4)	<b>3</b>	<b>129,260.</b>

**Net Profits Tax**

Total Due by 4/15/2020 (Form 2019 NPT, Line 11)	<b>NPT</b>
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**School Income Tax**

Total Due by 4/15/2020 (Form 2019 SIT, Line 12)	<b>SIT</b>
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**Part II Taxpayer Declaration and Signature Authorization**

Under penalties of perjury, I declare that I have examined a copy of my electronic tax return and accompanying schedules and statements for the tax year ending December 31, 2019, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the City of Philadelphia and to receive from the City of Philadelphia (a) an acknowledgement of receipt or reason for rejection of the transmission and (b) the reason for any delay in processing the return. If applicable, I authorize the City of Philadelphia and its designated financial agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my City taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic tax return and, if applicable, my electronic funds withdrawal consent.

**Taxpayer's Personal Identification Number (PIN): (check one box only)**

I authorize CLIFTONLARSONALLEN LLP to enter my PIN 06666 as my signature on my tax year 2019 electronically filed tax return.

I will enter my PIN as my signature on my tax year 2019 electronically filed tax return.

Signature

Date

**Practitioner PIN Method Returns Only - continue below**

**Part III Certification and Authentication - Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

23591119462

As a participant in the Practitioner PIN Program, I certify the above numeric entry is my PIN, which is my signature on the tax year 2019 electronically filed tax return for the taxpayer indicated above. I confirm I am participating in the Practitioner PIN Program in accordance with the requirements established for this program.

ERO's signature

Date

**ERO must retain this form and the supporting documents for three years.**

**DO NOT SUBMIT THIS FORM TO THE CITY OF PHILADELPHIA.**

# **Exhibit B**

## **to Affidavit of Thomas Isenberg**

